

1 THE HONORABLE SAMUEL J. STEINER
2 CHAPTER 13 PROCEEDINGS
3 NOTED FOR: 1/19/11; 9:30 AM
4 PLACE: 700 STEWART STREET
5 ROOM 8206, SEATTLE WA
6 RESPONSE DATE: 1/12/11

7
8 **IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

9
10 **In re:**)
11 **William and Australia Figgs,**) **Case No.: 09-23314**
12 **husband and wife,**) **MOTION TO CONFIRM CHAPTER 13 PLAN AS**
13 **Debtors.**) **AMENDED**

14 **COME NOW** the Debtors, William and Australia Figgs, by and through their attorney, George Peter
15 Rose, and respectfully move the Court to confirm their Chapter 13 Plan as amended (Amendment #1, dated
16 10/5/10).

17 **BASIS FOR MOTION**

18 1. The Debtors filed this Chapter 13 plan and petition on 12/18/09. This plan was filed as a 60-month Best
19 Effort Plan. The 1st Amended Plan was filed on 10/5/10 to include secured payments for two televisions,
20 furniture, and miscellaneous merchandise, and to eliminate the direct payments by the Debtors for this collateral.
21 Additionally, the plan payment was reduced from \$475.00 (\$237.500 semi-monthly) to \$142.00 per month
22 (\$71.00 semi-monthly), based on the Debtors' revised income and budget, reflected on amended Schedules I and
23 J.

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2. Chapter 13 Trustee Michael Fitzgerald had previously objected to confirmation of the Debtors' 1st Amended Chapter 13 plan on 11/8/10. The Chapter 13 Trustee had correctly asserted that the Debtors' amended Form B22C included an excessive deduction for telecommunication services on Line 37 of \$353.00. The correct amount, which reflects the Debtors' expenses for cable and internet, should have been \$140.00. The Trustee also correctly asserted that Line 57 should not have deducted \$452.67 to describe the Debtors' loss of Unemployment Benefits of \$452.67 in February, 2010, insofar as the Means Test reflects the Debtors' income during the 6-month time period prior to the bankruptcy filing. The Debtors have amended their Form B22C to correct these errors. The Debtors' amended Form B22C also includes a correction of the Debtors' charitable contributions from \$10.00 to \$30.00 per month, consistent with their Amended Schedule J. The Debtors' Amended Form B22C now reflects Line 59 Monthly Disposable Income of \$587.28.

3. On 10/5/10, the Debtors filed Amended Schedules I and J, an Amended Form B22C, and Amended Chapter 13 plan (1st Amended). The Debtors' Amended Chapter 13 plan still proposed a 60-month plan, but reduced their proposed Chapter 13 plan payment from \$475.00 to \$142.00 per month, the Debtors' revised disposable income per Schedules I and J. This reduction in monthly disposable income was based primarily on the Debtors' loss of \$457.50 per month in Unemployment Benefits, which ceased in February, 2010, as reflected on the Debtors' Amended Schedule I. The Debtors' Amended Schedule J reduced the Debtors' budget from \$4,440.07 to \$4,315.07, a reduction of \$125.00 per month.

4. The Debtors move for confirmation of their amended Chapter 13 plan (1st Amended) as a 60-month Best Effort plan, with plan payments of \$142.00 per month.

ISSUE I

FOR THE PURPOSE OF DETERMINING THE DEBTORS' MONTHLY PLAN PAYMENT BASED ON "PROJECTED DISPOSABLE INCOME," DOES THE BANKRUPTCY COURT HAVE DISCRETION TO BASE THIS CALCULATION ON THE DEBTORS' ACTUAL INCOME AS REPORTED ON

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1 **SCHEDULE I, RATHER THAN “CURRENT MONTHLY INCOME,” BASED ON FORM B22C?**

2 **ANSWER**

3 On June 7, 2010 the United States Supreme Court issued its opinion in *Hamilton v. Lanning*, 130 S.Ct.
4 2464 (2010). One of the central issues in *In re Lanning* was whether an above median debtor’s “Projected
5 Disposable Income,” pursuant to 11 U.S.C. §1325 (b)(1)(B) may deviate from “Current Disposable Income”
6 determined under Form B22C, where the debtor establishes such a significant change in circumstances so that
7 “Current Disposable Income” does not accurately or fairly project the debtor’s future ability to pay creditors. The
8 10th Circuit (See, *In re Lanning*, 545 F.3d 1269 (10th Cir., 2008)) had held that “as to the income side of the §1325
9 (b)(1)(B), the starting point for calculating the Chapter 13 debtor’s “Projected Disposable Income” is presumed to
10 be the debtor’s “Current Monthly Income,” as defined in 11 U.S.C. §101(10A)(A), subject to a showing of a
11 substantial change in circumstances” (*Lanning*, 545 F.3d at 1282). Where a debtor showed a “substantial change
12 in circumstances” between the income received during the 6-month period prior to filing and “actual income,” as
13 reported on Schedule I, the court had discretion to substitute “Actual Income” for “Current Monthly Income” as
14 the starting point in the “Projected Disposable Income” calculation (*Lanning*, 545 F.3d at 1282).

15 On appeal from the 10th Circuit’s decision that the bankruptcy courts had such discretion, the sole issue
16 before the Supreme Court was whether the 10th Circuit had erred in adopting the “forward-looking” approach to
17 arriving at “Current Monthly Income.” The Court affirmed the 10th Circuit’s decision, stating, “Consistent with
18 the text of §1325, and pre-BAPCA practice, we hold that when a bankruptcy court calculates a debtor’s
19 “Projected Disposable Income,” the court may account for changes in the debtor’s income or expenses that are
20 known or virtually certain at the time of confirmation. We, therefore, affirm the decision of the Court of Appeals”
21 (*Lanning*, 130 S.Ct. at 2478).

22 Based on the Debtors’ Amended Schedules I and J, the Debtors’ current and projected monthly disposable
23 income is \$142.04 per month. While the Debtors MDI (Line 59) on their Amended Form B22C is \$587.28,
24 the court should base the Debtors’ monthly plan payment on their actual income and expenses, rather than their
25

1 monthly disposable income per Form B22C, insofar as the latter includes income of \$452.67, which the Debtors
2 had been receiving for Unemployment Benefits, but which were terminated in February, 2010.

3 The court should find that the Debtors' loss of \$452.67 in Unemployment Benefits in February, 2010
4 constitutes a significant change in circumstances for the Debtors, and that the Debtors' Projected Disposable
5 Income of \$142.00 as reflected on the Debtors' Amended Schedules I and J should be used in determining the
6 Debtors' Chapter 13 plan payment.

7
8 **ISSUE II**

9 **ARE THE EXPENSES CLAIMED BY THE DEBTORS ON SCHEDULE J (AMENDED) REASONABLE**
10 **AND NECESSARY FOR THEIR SUPPORT?**

11 **ANSWER**

12 The Chapter 13 Trustee maintains that expenses listed in Amended Schedule J are not reasonably
13 necessary for the Debtors' maintenance and support, and that reducing the Debtors' expenses would result in a
14 higher "Projected Monthly Income," and therefore, a higher plan payment. The Debtors' monthly income and
15 monthly budget requirements have not changed since the Debtors' amendment to Schedules I and J on 10/5/10.
16 The Debtors' Schedules I and J reflect current and projected monthly disposable income of \$142.04 per month.
17 The Trustee challenges the following monthly budget items:

- 18 a. Telephone Expense (\$228.00): The Debtors currently spend approximately \$45.00 for their home
19 telephone service and \$93.00 and \$90.00 for each of their cell phone services, for a total of \$228.00.
- 20 b. Food (\$895.00): The Debtors' food expense of \$895.00 per month results in a budget of \$9.94 per
21 meal for both Debtors, calculating for three meals per day.
- 22 c. Transportation Expense (\$575.00): The Debtors calculated \$70.00 per week in gas expenses
23 (\$303.00 per month). The Debtors also estimated that their maintenance expenses for their 2003 Ford
24 Windstar and their 1994 Ford Taurus (with odometer mileage of 117,000 and 158,000 respectively) are
25 expected to cost approximately \$270.00 per month in maintenance expenses.

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1 d. Recreation Expense (\$150.00): The Debtors' recreation expense of \$35.00 per week should not
2 be found to be excessive, given the dollar amounts listed for recreation in other Chapter 13 cases routinely
3 confirmed by the court.

4 e. Furniture Storage (\$99.00): The Debtors' current apartment is too small to contain their
5 furniture. Accordingly, they have had to store their furniture at \$99.00 per month.

6 f. Support for Mother of Australia Figgs (\$110.00): The Debtors support the mother of Mrs. Figgs
7 by providing her \$110.00 per month in supplemental income, since she is not able to support herself on
8 her Social Security income alone. The mother of Mrs. Figgs is 82 years of age and lives by herself, her
9 husband having passed away in 2001. The Debtors feel compelled to support her to permit her to live
10 independently while she still can.

11
12 The budget items listed on Amended Schedule J should be found by the bankruptcy court to be
13 reasonably necessary expenses of the Debtors. The Debtors' proposed plan payment of \$142.00 per month is
14 consistent with their actual disposable income, as calculated by the Debtors' current income and current budget
15 requirements.

16
17 **RELIEF REQUESTED**

18 Based on the foregoing, the Debtors move the Court to confirm their Chapter 13 Plan as amended (1st
19 Amended Plan, dated 10/5/10).

20
21 **RESPECTFULLY** submitted this 14th day of December, 2010.

22
23
24 /s/ George Peter Rose

GEORGE PETER ROSE, WSBA #12488

Attorney for Debtors